

**Modification / Forgiveness of 2<sup>nd</sup> Mortgage for  
Tenant Endorsed Community Based Nonprofit Purchasers:  
Defining Eligible Purchasers  
Revised 9-13-00**

MAHRA Section 517(a)(5) provides that: “The Secretary may modify the terms or forgive all or part of the second mortgage ... if the project is acquired ... by a tenant-endorsed community based nonprofit ....”

**Defining Eligible Purchasers**

OMHAR will restrict modification/forgiveness of the 2<sup>nd</sup> mortgage to tenant-endorsed community based nonprofit purchasers as defined below, who are also independent (Draft on defining “independence” attached).

**Defining “Nonprofit” For Purposes of 2<sup>nd</sup> Mortgage Modification**

The Purchaser must qualify as “nonprofit” by virtue of the nonprofit status of one of the following:

- a. The Purchaser itself.
- b. The sole general partner of a limited partnership Purchaser.
- c. The sole managing member of a LLC Purchaser.

“Nonprofit status” will mean a nonprofit under state law. The entity need not qualify as a 501(c)

**Defining “Tenant Endorsed” For Purposes of 2<sup>nd</sup> Mortgage Modification**

OMHAR will consider tenant endorsement to be given to any Non-Profit as defined above if any of the following events occurs:

- a. A majority of the occupied tenant households in the subject property give their endorsement in writing.
- b. At the second tenant meeting, a majority of the occupied tenant households in the subject property vote in favor of endorsement.
- c. At the Second Tenant Meeting, at least 50% of the occupied tenant households present and voting, vote in favor of endorsement. If any specific concerns are raised by tenants voting not to endorse, the PAE must determine that the concerns are not so serious as to undermine the Purchaser’s qualification for second mortgage modification or forgiveness.
- d. If no one attends the meeting, or after failing to satisfy (c) above, the Purchaser appeals to OMHAR, and OMHAR determines that under the appropriate standard for appeal, the Purchaser should qualify as tenant endorsed.

Endorsement, once achieved, cannot be retracted.

### **Defining “Community Based” For Purposes of 2<sup>nd</sup> Mortgage Modification**

OMHAR will consider an entity to be a community based” Non-Profit if it (i)meets the definition of Non-Profit set forth above and (ii) if any of the following is true:

- a. The Non-Profit is a corporation, one-third of whose Board of Directors are project tenants or low income members of the community.
- b. The Non-Profit is a limited partnership or limited liability corporation with a Community Advisory Board whose structure has been approved by the PAE (prior to the M2M closing) as meeting these requirements:
  - i. The membership of the Community Advisory Board must be selected in a manner to assure that there is significant representation of the views of the community in which the project is located.
  - ii. The CAB must have a genuine substantive voice in project operations, as provided in the limited partnership agreement or LLC operating agreement, as applicable.
  - iii. The CAB must have regular meetings with written minutes
- c. The Non-Profit is a Tenant Organization as defined in the Final Rule.
- d. The Non-Profit, the general partner of the limited partnership which owns the subject property, the managing member of the limited liability company which owns the subject property, or the Controlling Entity (as defined below) are themselves a CBDO, CHDO or CDFI. A “Controlling entity” is an entity that holds 100% ownership or 100% control.

CBDOs, CHDOs, and CDFIs may seek and obtain an organization-specific written determination with respect to entities they created and funded but that are not themselves CBDOs / CHDOs / CDFIs or qualified as community based under subparagraph (d) above.. OMHAR would consider applications on behalf of entities with additional sponsors other than the CBDO / CHDO / CDFI. OMHAR would issue the determination based upon the existence of a substantial investment by the sponsoring CBDO / CHDO / CDFI and upon the showing of a mission that is consistent with CHDO / CBDO / CDFI status. The investment would be significant in relation to the sponsoring organization’s resources, and in any event at least \$100,000.